

## Surface Transportation Board, DOT

## § 1102.2

(b) *Board* means (1) the Surface Transportation Board and (2) any body or individual to which or to whom decision making authority is assigned by the Board or the Chairman of the Board, including the Chairman, another Board Member, employee board, an individual employee, an administrative law judge, or other hearing officer entitled to act in a particular proceeding. See 49 CFR part 1011, Board Organization; Delegations of Authority.

(c) *Decision* means any formal, published action of the Board, including orders and notices.

(d) *Party* means a complainant, defendant, applicant, respondent, protestant, intervener, or petitioner in any proceeding, or other persons permitted or directed by the Board to participate in a proceeding. It will not include persons merely signing certificates of support or witnesses at oral hearing or in modified procedure proceedings, unless they are otherwise a party to the proceeding. Persons on the docket service list merely for the purpose of receiving copies of Board releases are not considered parties to the proceeding.

(e) *Proceeding* includes:

(1) An *informal complaint* filed under §§ 1130.1, or 1130.3 or a *formal complaint* alleging violation of any provision of the Act or of any regulation or requirement made pursuant to a power granted by such Act, including petitions on special dockets;

(2) An *application* for (i) the granting of any right, privilege, authority, or relief under or from any provision of the Act or of any regulation or requirement made pursuant to a power granted by such Act, or (ii) the consideration of any submission required by law to be made to the Board;

(3) An *investigation* instituted by the Board;

(4) A *rulemaking* proposal instituted by the Board; or

(5) A petition for exemption filed under 49 U.S.C. 10502 requesting the Board to exempt from application all or part of subtitle IV of title 49 of the United States Code any person, class of

persons, transaction, or service related to a rail carrier.

[47 FR 49548, Nov. 1, 1982, as amended at 50 FR 30275, July 25, 1985; 64 FR 53267, Oct. 1, 1999; 69 FR 58365, Sept. 30, 2004]

### § 1101.3 Construction.

The rules of construction contained in chapter 1 of title 1 of the United States Code (1 U.S.C. 1 *et seq.*) apply in this chapter. Among other things, they provide that the singular includes the plural, and vice versa; that the masculine includes the feminine; that the word “person” includes corporations, associations, and the like; that “county” includes parish and similar subdivisions; and that “company” includes successors and assigns.

## PART 1102—COMMUNICATIONS

Sec.

1102.1 How addressed.

1102.2 Ex parte communications prohibited; penalties provided.

AUTHORITY: 49 U.S.C. 721.

### § 1102.1 How addressed.

All communications should be addressed to the Secretary of the Board, Surface Transportation Board, Washington, DC 20423 unless otherwise specifically directed by another Board regulation. All communications should designate the docket number and title, if any. The person communicating shall state his address, and the party he represents.

[47 FR 49548, Nov. 1, 1982]

### § 1102.2 Ex parte communications prohibited; penalties provided.

(a) *Definitions.* (1) “On-the-record proceeding” means any matter described in Sections 556–557 of the Administrative Procedure Act (5 U.S.C. 556–557) or any matter required by the Constitution, statute, Board rule, or by decision in the particular case, that is decided solely on the record made in a Board proceeding.

(2) “Person who intercedes in any proceeding” means any person, partnership, corporation, or association, private or public, outside of the Board which is neither a party nor party’s

agent, that volunteers a communication that it has reason to know may advance or adversely affect the interest of a party or party's agent in any proceeding before the Board.

(3) *Ex Parte* communication concerning the merits means an oral or written communication by or on the behalf of a party which is made without the knowledge or consent of any other party that could or is intended to influence anyone who participates or could reasonably be expected to participate in the decision.

(b) *Communications that are not prohibited.* (1) Any communication to which all the parties to the proceeding agree, or on which the Board formally rules, may be made on an *ex parte* basis;

(2) Any communication of facts or contention which has general significance for a regulated industry if the communicator cannot reasonably be expected to have known that the facts or contentions are material to a substantive issue in a pending on-the-record proceeding in which it is interested;

(3) Any communication by means of the news media that in the ordinary course of business of the publisher is intended to inform the general public, members of the organization involved, or subscribers to such publication with respect to pending on-the-record proceedings.

(c) *Prohibitions.* (1) No party, counsel, agent of a party, or person who intercedes in any on-the-record proceeding shall engage in any *ex parte* communication concerning the merits of the proceeding with any Board Member, hearing officer, joint board member, employee board member or employee of the Board who participates, or who may reasonably be expected to participate, in the decision in the proceeding.

(2) No Board Member, hearing officer, joint board member, employee board member or employee of the Board who participates, or is reasonably expected to participate, in the decision in an on-the-record proceeding shall invite or knowingly entertain any *ex parte* communication concerning the merits of a proceeding or engage in any such communication to any party, counsel, agent of a party, or person reasonably

expected to transmit the communication to a party or party's agent.

(d) *When prohibitions take effect.* The prohibitions against *ex parte* communications concerning the merits of a proceeding apply from the date on which a proceeding is noticed for oral hearing or for the taking of evidence by modified procedure, or when the person responsible for the communication has knowledge that the proceeding will be so noticed, or at any time the Board, by rule or decision, specifies.

(e) *Procedure required of Board members and employees upon receipt of ex parte communications concerning the merits of a proceeding.* Any person who receives an *ex parte* communication concerning the merits of a proceeding must promptly transmit either the written communication, or a written summary of the oral communication with an outline of the surrounding circumstances to the Secretary of the Board. The Secretary shall place all of the material in the correspondence section of the public docket of the proceeding. A recipient of such *ex parte* communication, who has doubt as to the nature of the communication, may request a ruling on the question from the Board's Designated Agency Ethics Official. The Designated Agency Ethics Official shall promptly reply to such requests. The Secretary shall promptly notify the Chairman of the Board of such *ex parte* communications sent to the Secretary. The Designated Agency Ethics Official shall promptly notify the Chairman of all requests for rulings sent to the Designated Agency Ethics Official. The Chairman may require that any communication be placed in the correspondence section of the docket when fairness requires that it be made public, even if it is not a prohibited communication. The Chairman may direct the taking of such other action as may be appropriate under the circumstances.

(f) *Sanctions.* (1) The Board may censure, suspend, or revoke the privilege of practicing before the agency of any person who knowingly and willfully engages in or solicits prohibited *ex parte* communication concerning the merits of a proceeding.

(2) The relief or benefit sought by a party to a proceeding may be denied if

## Surface Transportation Board, DOT

## § 1103.3

the party, or his agent knowingly and willfully violates the foregoing rules.

(3) The Board may censure, suspend, dismiss, or institute proceedings to suspend or dismiss any Board employee who knowingly and willfully violates the foregoing rules.

[47 FR 49548, Nov. 1, 1982, as amended at 58 FR 42027, Aug. 6, 1993]

### PART 1103—PRACTITIONERS

#### Subpart A—General Information

Sec.

1103.1 Register of practitioners.

1103.2 Attorneys-at-law—qualifications and requirements to practice before the Board.

1103.3 Persons not attorneys-at-law—qualifications and requirements for practice before the Board.

1103.4 Initial appearances.

1103.5 Discipline.

#### Subpart B—Canons of Ethics

1103.10 Introduction.

#### THE PRACTITIONER'S DUTIES AND RESPONSIBILITIES TOWARD THE BOARD

1103.11 Standards of ethical conduct in courts of the United States to be observed.

1103.12 The practitioner's duty to and attitude toward the Board.

1103.13 Attempts to exert political or personal influence on the Board are prohibited.

1103.14 Private communications with the Board are prohibited.

#### THE PRACTITIONER'S DUTIES AND RESPONSIBILITIES TOWARD A CLIENT

1103.15 The practitioner's duty to clients, generally.

1103.16 Adverse influences and conflicting interests.

1103.17 Joint association of practitioners and conflicts of opinion.

1103.18 Withdrawal from employment.

1103.19 Advising upon the merits of a client's cause.

1103.20 Practitioner's fees and related practices.

1103.21 How far a practitioner may go in supporting a client's cause.

1103.22 Restraining clients from improprieties.

1103.23 Confidences of a client.

#### THE PRACTITIONER'S DUTIES AND RESPONSIBILITIES REGARDING WITNESSES, OTHER LITIGANTS AND THE PUBLIC

1103.24 Use of adverse witnesses.

1103.25 Treatment of witnesses, litigants and other counsel.

1103.26 Discussion of pending litigation in the public press.

1103.27 Candor and fairness in dealing with other litigants.

1103.28 Negotiations with opposing party.

1103.29 Public communication and solicitation.

1103.30 Acceptance of employment.

1103.31 Responsibility for litigation.

1103.32 Discovery of imposition and deception and duty to report corrupt or dishonest conduct.

1103.33 Responsibility when proposing a person for admission to practice before the Board.

1103.34 Intermediaries.

1103.35 Partnership or professional corporation names and titles.

AUTHORITY: 21 U.S.C. 862; 49 U.S.C. 703(e), 721.

SOURCE: 47 FR 49549, Nov. 1, 1982, unless otherwise noted.

#### Subpart A—General Information

##### § 1103.1 Register of practitioners.

The Board maintains a register containing the names of all non-attorneys entitled to practice before it. The register is maintained according to the individual non-attorney practitioner's name and not by corporate or firm name. Corporations and firms are not admitted or recognized as practitioners before the Board.

##### § 1103.2 Attorneys-at-law—qualifications and requirements to practice before the Board.

Any person who is a member in good standing of the bar of the highest court of any State, Commonwealth, possession, territory, or the District of Columbia may represent persons before the Board.

##### § 1103.3 Persons not attorneys-at-law—qualifications and requirements for practice before the Board.

(a) *In general.* Any citizen or resident of the United States, not an attorney-at-law, who files an application for admission to practice, accompanied by the payment of the fee prescribed by rule or order of the Board, and who